

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	NO.
OLD DUTCH MUSTARD COMPANY, INC.,	)	
d/b/a PILGRIM FOODS,	)	
	)	
Defendant.	)	
_____	)	

**CONSENT DECREE**

WHEREAS, the Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint ("the Complaint") alleging that the Defendant, Old Dutch Mustard Company, Inc., d/b/a Pilgrim Foods ("Pilgrim"), has violated Sections 301, 308, and 311 of the Clean Water Act ("the Act"), 33 U.S.C. §§ 1311, 1318, and 1321; and

WHEREAS, Defendant, Pilgrim, is a New York corporation and operates a manufacturing facility at 68 Old Wilton Road in Greenville, New Hampshire ("Facility"); and

WHEREAS, the Complaint alleges that at the Facility, in violation of Sections 301, 308, and 311 of the Act, 33 U.S.C. §§ 1311, 1318, and 1321, Pilgrim failed to apply for a storm water permit, discharged storm water without a National Pollutant Discharge Elimination System ("NPDES") permit, discharged process water without a NPDES

permit, discharged oil in a harmful quantity, and failed to develop and implement a Spill Prevention Control and Countermeasure ("SPCC") Plan;

WHEREAS, the United States has reviewed the financial information submitted by Pilgrim to determine Pilgrim's ability to pay a civil penalty and, based upon this financial information, the United States has determined that Pilgrim is able to pay a civil penalty in the amount and according to the schedule set forth in this Decree; and

WHEREAS, the parties agree, without adjudication or admission of facts or law, that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the disputed claims alleged in the Complaint, and the parties consent to the entry of this Consent Decree;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. STATEMENT OF CLAIM.

1. The Complaint filed in this action states claims upon which relief can be granted against the Defendant pursuant to Sections 309 and 311 of the Act, 33 U.S.C. §§ 1319 and 1321.

II. JURISDICTION AND VENUE.

2. The Court has jurisdiction over the subject matter of this action and over the parties to this Consent Decree pursuant to Sections 309(b) and 311(b)(7)(E) of the Act, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1331, 1345 and 1355. The Court also has jurisdiction to issue a declaratory judgment in this action pursuant to 28 U.S.C.

§ 2201. Venue properly lies in this district pursuant to Section 309(b) and 311(b)(7)(E) of the Act, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1391(b) and (c) and 1395. The United States has notified the State of New Hampshire of the commencement of this action.

### III. APPLICABILITY.

3. The provisions of this Consent Decree shall apply to and be binding upon the United States on behalf of the EPA, and upon Pilgrim and its agents, successors, and assigns. Actions or inactions of Pilgrim's officers, servants and employees involved in the implementation of this Consent Decree shall be considered actions or inactions of Pilgrim. Pilgrim shall give notice and a true copy of this Consent Decree and all appendices to all persons, firms, and corporations acting in active concert or participation with Pilgrim related to the performance of the obligations set forth in this Consent Decree. Pilgrim also shall give notice and a true copy of this Consent Decree and all appendices to all successors in interest prior to any transfer of ownership or other interest in all or part of the Facility or its operations. Simultaneously with such notice, Pilgrim shall notify, in writing, EPA Region I and the United States Attorney for the District of New Hampshire, at the addresses specified in Paragraph 34.a. of this Consent Decree, of such succession in interest and that such notice and copy has been given by Pilgrim. Any such transfer must be conditioned upon the transferee's agreement to undertake the

obligations required by this Decree, and no such transfer shall relieve Defendant of its obligation to ensure that the terms of this Decree are implemented.

4. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree; Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

6. Pilgrim hereby agrees not to oppose entry of this Consent Decree by this Court and not to challenge the validity of any provision of this Consent Decree.

#### IV. OBJECTIVES.

7. It is the express purpose of the parties in entering into this Consent Decree to further the goals of the Act, as enunciated at Sections 101 and 311(b)(1) of the Act, 33 U.S.C. §§ 1251 and 1321(b)(1), and to settle all claims by the United States against Pilgrim as alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. Any and all provisions herein relating to monitoring, reporting, and inspections shall have the objective of ensuring full compliance with the Act, the

regulations promulgated pursuant to the Act, and the terms of the NPDES permit or permits issued to Pilgrim.

#### V. DEFINITIONS.

8. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the Act or in regulations promulgated pursuant to the Act, shall have the meaning assigned to them in the Act and such regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Complaint” shall mean the complaint filed by the United States in this action;
- b. “Consent Decree” shall mean this decree and all appendices attached hereto;
- c. “Day” shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;
- d. “Defendant” shall mean the Old Dutch Mustard Company, Inc., d/b/a Pilgrim Foods;

e. "Effective Date" shall mean the date of entry of this Consent Decree by the Court after satisfaction of the public notice and comment procedures set forth in Section XXVI of this Consent Decree;

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

g. "Facility" shall mean Defendant's foods and kindred products processing facility located at 68 Old Wilton Road in Greenville, New Hampshire;

h. "Interest" shall mean interest at the rate provided for in 28 U.S.C. § 1961;

i. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral;

j. "Parties" shall mean the United States and the Defendant;

k. "Section" shall mean a portion of this Consent Decree identified by a roman numeral;

l. "State" shall mean the State of New Hampshire;

m. "United States" shall mean the United States of America, acting on behalf of EPA.

## VI. CIVIL PENALTY.

9. Pilgrim shall pay a civil penalty of \$190,000 plus Interest through four installment payments as set forth below. The first installment payment shall be in the

amount of \$20,000 plus Interest and shall be due within 30 days following the Effective Date of this Consent Decree. The second installment payment shall be in the amount of \$50,000 plus Interest and shall be due on the one-year anniversary of the Effective Date of this Consent Decree. The third installment payment shall be in the amount of \$60,000 plus Interest and shall be due on the second anniversary of the Effective Date of this Consent Decree. The fourth installment payment shall be in the amount of \$60,000 plus Interest and shall be due on the third anniversary of the Effective Date of this Consent Decree. Of the first installment payment, \$16,150 shall be allocated to the violations of Section 311 of the Act, 33 U.S.C. §1321. The remaining \$3,850 of the first payment and any accrued Interest and the entirety of all remaining payments and any accrued Interest shall be allocated to the balance of the violations. Each installment payment shall include the principal amount due plus an additional sum of accrued Interest on the declining balance calculated from the date of lodging of this Consent Decree. Pilgrim may accelerate these payments, and Interest will accrue only on the actual outstanding balance.

10. In the event Pilgrim files for bankruptcy protection, Pilgrim's obligation to pay the entire amount then owing, plus any accrued Interest, will immediately become due subject to all of Pilgrim's rights and remedies under the Bankruptcy Code and applicable non-bankruptcy law.

11. Pilgrim shall make payment by FedWire Electronic Funds Transfer ("EFT") in accordance with current EFT procedures and in accordance with written instructions to

be provided by the United States Attorney's Office, 55 Pleasant Street, Concord, NH 03301-3904, referencing USAO Inv. No. 2000V00094, EPA Region I, and DOJ Case Number 90-5-1-1-07145. The costs of such electronic funds transfer shall be the responsibility of Pilgrim. The United States Attorney's Office will advise its online accounting office to initiate the appropriate Online Payment and Collection transaction to the United States Coast Guard National Pollution Funds Center for that portion of the civil penalty allocated to violations of Section 311 of the Act, 33 U.S.C. § 1321. Pilgrim shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the United States as specified in Paragraph 34.a., and to the United States Coast Guard, Civil Penalties, P.O. Box 100160, Atlanta, GA 30384.

## VII. STORM WATER AND SPCC COMPLIANCE MEASURES.

### 12. Compliance with Storm Water Requirements.

a. By the date of lodging of this Consent Decree, Pilgrim shall achieve, and thereafter maintain, compliance with Pilgrim's obligations under the Stormwater Multi-Sector General Permit, 60 Fed. Reg. 50804 ("Multi-Sector General Permit"), and the Storm Water Pollution Prevention Plan ("SWPPP") and any amendments thereto developed for the Facility. Pilgrim shall also comply with the terms of any future NPDES permit issued to its facility.



b. By the date of lodging of this Consent Decree, Pilgrim shall ensure that the following activities are completed at the Facility:

- (1) Permanent termination of all unpermitted discharges; and
- (2) Construction of secondary containment that will ensure containment of any significant spill that could result from tank rupture or bulk product transfer occurring within the Facility's tank farm.

13. Compliance with SPCC Requirements.

By the date of lodging of this Consent Decree, Pilgrim shall achieve, and thereafter maintain, compliance with Pilgrim's obligations under the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112 and the SPCC Plan developed for the Facility.

VIII. STORM WATER AND SPCC COMPLIANCE REPORTING.

14. For the 12 months following the date of lodging of this Consent Decree commencing with the first full calendar month following the date of lodging of this Consent Decree, Pilgrim shall submit to EPA, within 14 days of the end of each month, copies of the following documents or reports performed pursuant to the SWPPP and/or the requirements of the Multi-Sector General Permit or any subsequently issued permit:

- a. Copies of all reports of weekly and monthly routine facility inspections, site compliance evaluations, and sampling and visual monitoring conducted during that month; and

b. The results of any monitoring required by any NPDES permit that EPA has issued or may issue in the future and by the SWPPP.

15. For the 12 months following the date of lodging of this Consent Decree commencing with the first full calendar month following the date of lodging of this Consent Decree, Pilgrim shall submit to EPA, within 14 days following the end of each month, copies of all inspection reports performed pursuant to the SPCC Plan during that month.

16. EPA will review the reports submitted pursuant to Paragraphs 14 and 15 and will, with written notice to Pilgrim, identify any deficiencies in the reports or in implementation of the SWPPP or SPCC Plan. Pilgrim shall make appropriate revisions to correct deficiencies within 14 days of receipt of notice of any deficiencies. If the deficiencies are not cured, Pilgrim will be subject to stipulated penalties pursuant to Section XII.

17. The requirements of this Section of the Consent Decree do not relieve Pilgrim of its obligation to submit any other reports or information required by this Consent Decree, the Act, or by the regulations promulgated thereunder including, but not limited to, the reporting requirements set forth in the Multi-Sector General Permit or permits issued by EPA in the future, or by any state or local requirements.

IX. ENVIRONMENTAL AUDIT.

18. Pilgrim shall retain an independent third party auditor to conduct an environmental compliance audit at the Facility in accordance with Appendix A hereto, the provisions of which are a part of this Consent Decree. Appendix A shall be effective upon the date of lodging of this Consent Decree.

X. ENVIRONMENTAL MANAGEMENT SYSTEM.

19. Pilgrim shall develop and implement the improvements to its Environmental Management System ("EMS") in accordance with Appendix B, the provisions of which are a part of this Consent Decree. Appendix B shall be effective upon the date of lodging of this Consent Decree.

XII. STIPULATED PENALTIES.

20. Pilgrim shall pay stipulated penalties to the United States for violations of this Consent Decree, as set forth below:

a. For failure to pay the civil penalty or Interest pursuant to the terms of Paragraph 9, Pilgrim shall pay stipulated penalties in the following amounts for each day during which the payment is not made:

Period of Failure <u>To Comply</u>	Penalty Per Violation <u>Per Day</u>
1st through 30th day	\$250
31st and beyond	\$500.

b. Two hundred fifty dollars (\$250) per violation per day for each day Pilgrim is late in mailing any notification, report, or correction required by Section VIII (Storm Water and SPCC Compliance Reporting), Section IX (Environmental Audit), or Section X (Environmental Management System).

c. Five hundred dollars (\$500) per violation per day that Pilgrim fails to comply with any of the requirements set forth in Section VII (Storm Water and SPCC Compliance Measures).

d. For failure to complete any requirement of Section IX (Environmental Audit), Section X (Environmental Management System), or for failure to provide the certification required by Section XVII (Certification), Pilgrim shall pay stipulated penalties in the following amounts for each day during which each violation continues:

Period of Failure <u>To Comply</u>	Penalty Per Violation <u>Per Day</u>
1st through 30th day	\$200
31st through 60 <sup>th</sup> day	\$350
61 <sup>st</sup> day and beyond	\$500.

21. Stipulated penalty payments to the United States as specified in the preceding paragraph are to be made, without demand, by EFT referencing USAO File Number 2000V00094, EPA Region I, and DOJ Case Number 90-5-1-1-07145. The EFT

shall be made in accordance with current EFT procedures and in accordance with written instructions to be provided by the United States Attorney's Office, 55 Pleasant Street, Concord, NH 03301-3904. The costs of such electronic funds transfer shall be the responsibility of Pilgrim. Pilgrim shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the United States as specified in Paragraph 34.a. All stipulated penalties begin to accrue on the day after performance is due or on the day a violation occurs, and continue to accrue through the final day of all corrections of the noncompliance. Payments shall be made by the 15th day of the month following the calendar month in which performance is due or any violations occur. In the event that a stipulated penalty payment is not made on time, without demand, such penalty shall be subject to Interest at the statutory judgment rate set forth at 28 U.S.C: § 1961 for each day of late payment or non-payment. Nothing in this paragraph shall be construed to limit the United States in seeking any remedy otherwise provided by law for failure to pay any stipulated penalties.

22. Penalties shall continue to accrue as provided in accordance with Paragraph 32 during any dispute resolution, with Interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, accrued penalties determined to be owing, together with

accrued Interest, shall be paid to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall, within 60 days of receipt of the Court's decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued Interest, except as provided in subparagraph c. below;

c. If the District Court's decision is appealed by any party, Defendant shall, within 15 days of receipt of the final appellate court decision, pay all accrued penalties determined by the Court to be owing to the United States, together with accrued Interest.

23. The stipulated penalty provisions set forth in Paragraphs 21-23 shall be in addition to any rights reserved by the United States pursuant to Paragraphs 37-38 (XIX. Non-waiver Provisions) of this Consent Decree. Nothing in Paragraphs 20-22 shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or EPA to seek other remedies or sanctions that may be available to them by virtue of Defendant's violation(s) of this Consent Decree or of any statutes, regulations, or permits upon which the Consent Decree is based.

24. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

### XIII. FORCE MAJEURE.

25. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes entirely beyond the control of Pilgrim, its consultants, contractors and subcontractors, that delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding the best efforts of Pilgrim, its consultants, contractors and subcontractors, to avoid the delay. Stipulated penalties shall not be due for the number of days of noncompliance caused by a Force Majeure event as defined in this paragraph, provided that Pilgrim complies with the terms of this Section XIII. Examples of events which may constitute Force Majeure events include natural disasters, national emergencies, and delays in obtaining any required approvals or permits, despite Pilgrim's complete and timely submission of requests for approval and applications for required permits and any supplemental information that may be requested. Examples of events that are not Force Majeure events include, but are not limited to, normal inclement weather, unanticipated or increased costs or expenses of work, the financial difficulty of Pilgrim to perform such work, acts or omissions attributable to Pilgrim's contractors or representatives, and the failure of Pilgrim or Pilgrim's contractors or representatives to make complete and timely application for any required approval or permit. "Best efforts" include using best efforts to anticipate any potential Force Majeure event and to address the effects of any such event (a) as it is

occurring; and (b) after it has occurred, such that the delay is minimized to the greatest extent possible.

26. If any event occurs which may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Pilgrim shall notify EPA within 24 hours after Pilgrim first knew or should have known that the event might cause a delay. Within five working days thereafter, Pilgrim shall provide to EPA, at the addresses specified in Paragraph 34.a., a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by Pilgrim to prevent or minimize the delay, a proposed schedule for the implementation of such measures, and a statement as to whether, in the opinion of Pilgrim, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Notwithstanding the foregoing, Pilgrim shall notify EPA orally or by facsimile within two hours of becoming aware of any event that may constitute a basis for a Force Majeure event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA within 24 hours. Failure to give timely and complete notice in accordance with this paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.



27. If EPA agrees that a delay or anticipated delay is attributable to Force Majeure, the parties shall stipulate in writing to an extension of time for the performance of the affected requirements of this Consent Decree, not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances. Stipulated penalties shall not be due for the number of days of noncompliance caused by such circumstances.

28. If the parties are unable to agree whether Pilgrim's failure to comply with a provision of this Consent Decree is attributable to a Force Majeure event, or on the number of days of noncompliance that were caused by a Force Majeure event, the matter shall be subject to dispute resolution. Pilgrim shall notify EPA of its request to invoke dispute resolution within 10 days of receipt of written notice from EPA that it disagrees with Pilgrim's position either (a) that a delay is attributable to Force Majeure, or (b) as to the number of days of noncompliance caused by Force Majeure. Thereafter, the provisions of Section XIV (Dispute Resolution) shall apply. If the Court then determines that the failure to comply was caused by circumstances beyond the control of Pilgrim and any entity controlled by Pilgrim, including Pilgrim's consultants, contractors and subcontractors, and it determines that Pilgrim or any entity controlled by Pilgrim could not have foreseen and prevented such noncompliance, Pilgrim shall be excused as to the failure to comply for the period of time the noncompliance continued due to such circumstances.

29. In any such determination made by the Court pursuant to the preceding paragraph, Pilgrim shall bear the burden of proving by a preponderance of the evidence (1) that the noncompliance was caused by circumstances beyond the control of Pilgrim and any entity controlled by Pilgrim, including its contractors and consultants; (2) that Pilgrim or any entity controlled by Pilgrim could not have foreseen and prevented such violation; and (3) the number of days of noncompliance that were caused by such circumstances. If Pilgrim fails to sustain its burden of proof under this paragraph, stipulated penalties shall be paid for each day of noncompliance beginning with the first day of such noncompliance including Interest at the rate provided for in 28 U.S.C. § 1961 from the date that the stipulated penalties were originally due. The time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by mutual agreement of the parties for a period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

30. Compliance with any requirement of this Consent Decree by itself shall not constitute compliance with any other requirement. Pilgrim must make an individual showing of proof regarding each requirement for which an extension is sought.

#### XIV. DISPUTE RESOLUTION.

31. Any dispute that arises under or with respect to this Consent Decree shall first be the subject of informal negotiations. The period of informal negotiations shall not

exceed 20 days, unless the parties agree in writing to a longer period, from the time Defendant sends the EPA a written Notice of Dispute and a written Statement of Position, including any supporting factual data, analysis, opinion, or documentation. If the parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless Defendant files with this Court a motion for review of the EPA decision and serves it upon the United States within 10 days of receipt of a written EPA decision on the matter in dispute. In addition to containing the supporting factual data, analysis, opinion, and documentation upon which Defendant relies, the motion shall describe the history of the matter in dispute and the relief requested. The United States may file a response to any issues raised in the Defendant's motion within 60 days following service of Defendant's motion. The United States' response shall contain a written statement of its position on the matter in dispute, including any supporting factual data, analysis, opinion, and documentation, and may set forth its views on any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. In any judicial proceeding pursuant to this paragraph that concerns the performance of the Compliance Program under Sections VII and VIII of this Consent Decree, Defendant shall have the burden of demonstrating that the EPA's position is arbitrary and capricious or otherwise not in accordance with law. In all other disputes, Defendant shall bear the burden of demonstrating that its position complies with, and furthers the objectives of, this Consent Decree and the Act.

32. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII.

#### XV. RIGHT OF ENTRY.

33. EPA and its contractors, consultants, and attorneys shall have authority to enter Pilgrim's facilities, at all reasonable times, upon proper identification, for the purposes of monitoring the progress of activity required by this Consent Decree, verifying any data or information submitted to EPA under this Consent Decree, assessing Pilgrim's compliance with this Consent Decree, taking samples, and taking splits of samples collected by Pilgrim or its consultants. This requirement is in addition to, and not in limitation of, EPA's authority pursuant to the Act and any other provision of state or federal law.

#### XVI. FORM OF NOTICE.

34.a. Unless otherwise provided in this Consent Decree, submissions required by this Consent Decree to be made to the United States shall be made in writing to the

following respective addressees, unless written notice is given that another individual has been designated to receive the submissions:

As to the Department of Justice

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611 - Ben Franklin Station  
Washington, DC 20044-7611  
Attn: Peter Flynn  
202-514-5520  
202-616-2427 (fax)

As to the United States Attorney

T. David Plourde  
Assistant United States Attorney  
District of New Hampshire  
55 Pleasant Street  
Concord, NH 03301-3904  
603-225-1552  
603-225-1470 (fax)

As to the EPA

Chief, Water Technical Unit  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I  
One Congress Street, Suite 1100 – Mail Code SEW  
Boston, MA 02114-2023  
Attn: Joy Hilton, Environmental Engineer  
617-918-1877  
617-918-1809 (fax)

and

Chief, Legal Regulatory Unit  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I  
One Congress Street, Mail Code SEL  
Boston, MA 02114-2023  
Attn: Kathleen E. Woodward, Senior Enforcement Counsel  
617-918-1780  
617-918-1809 (fax)

b. Notice to Pilgrim under this Consent Decree shall be made in writing to the following addressees, unless written notice is given that another individual has been designated to receive notice:

Mr. Paul Santich, President  
Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods  
98 Cutter Mill Road  
Great Neck, NY 11021  
516-466-0522  
516-466-0762 (fax)

and to:

Mr. Charles Santich, General Manager  
Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods  
68 Old Wilton Road  
Greenville, NH 03048  
603-878-2100  
603-878-2103 (fax)

with a copy to:

Robert P. Cheney, Jr., Esq.  
Sheehan, Phinney, Bass + Green, PA  
143 North Main Street, Suite 103  
Concord, NH 03301-5089  
603-223-2020  
603-224-8899 (fax)

and to:

Thomas S. Burack, Esq.  
Sheehan, Phinney, Bass + Green, PA  
1000 Elm Street, P.O. Box 3701  
Manchester, NH 03105-3701  
603-668-0300 / 627-8122  
603-627-8121 / 641-2332 (fax)

#### XVII. CERTIFICATION.

35. All written notices, reports or any other submissions required by this Consent Decree, except audit reports prepared by independent auditors, shall contain the following certification signed by a senior management official of Pilgrim:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### XVIII. NOT A PERMIT.

36. This Consent Decree is neither a permit nor a modification of existing permits under any federal, state, or local law and in no way relieves Pilgrim of its responsibilities to comply with all applicable federal, state, and local laws and regulations.

## XIX. NON-WAIVER PROVISIONS.

37. This Consent Decree does not limit any rights or remedies available to the United States for any violation by Pilgrim of the Act and associated regulations or permit conditions, except that this Consent Decree fully satisfies the civil judicial claims as alleged in the Complaint in this action through the date of lodging of this Consent Decree. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations. This Consent Decree does not limit the standing of any person under Section 505 of the Act, 33 U.S.C. § 1365, to sue for any future violation of the Act not addressed by this Consent Decree. Plaintiff expressly reserves all rights and remedies, legal and equitable, available to it for all violations of the Act and other applicable laws where such violations are not alleged in the Complaint, and reserves all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree. Nothing herein shall be construed to limit the power of the United States, consistent with its authority, to undertake any action against any person, in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment. Except as specifically provided in this Consent Decree, Defendant does not waive, but rather specifically reserves, all defenses that would be available to it under the law should the United States choose to pursue further enforcement action based on the facts and circumstances involved in this civil penalty action. This Consent Decree is entered into by the parties for the purpose of



settlement and does not constitute an admission or finding of any violation of federal or state law, rule, regulation, permit or court decision. This Consent Decree may not be used in any proceeding of any type as evidence or proof of any fact or as evidence of the violation of any law, rules, regulations, permits or court decisions, except in a proceeding to enforce the provisions of this Consent Decree.

38. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to re-institute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the financial information provided by Pilgrim is false or, in any material respect, inaccurate.

#### XX. COSTS.

39. Each party shall bear its own costs and attorney's fees in this action. Pilgrim shall be responsible for costs, including attorney's fees, incurred by the United States in collecting any outstanding penalties due under this Consent Decree and in successfully obtaining judicial enforcement of the requirements of this Consent Decree.

#### XXI. RETENTION OF JURISDICTION.

40. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

## XXII. MODIFICATION.

41. Any material modification of this Consent Decree shall be by agreement of the parties and in writing and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be by agreement of the parties and in writing and shall not take effect until filed with the Court.

## XXIII. TERMINATION.

42. Either party may move the Court to terminate this Consent Decree after (1) Pilgrim has paid all penalties due under Sections VI and XII of this Decree; (2) Pilgrim has demonstrated to EPA's satisfaction full compliance with the requirements of Section VII for 12 consecutive months and completed the reporting requirements of Section VIII; and (3) Pilgrim has fulfilled to EPA's satisfaction the requirements of Sections IX and X. The United States may oppose any motion by Pilgrim to terminate the Consent Decree.

## XXIV. FINAL JUDGMENT.

43. Entry of this Consent Decree constitutes final judgment under Rule 54 of the Federal Rules of Civil Procedure.

## XXV. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT.

44. Pilgrim shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Pilgrim agrees to

accept service by mail and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court, including, but not limited to, service of a summons. Pilgrim shall notify the United States Department of Justice and the EPA as specified in Paragraph 34.a. of any change in the identity or address of Defendant, its agent for service, or its counsel.

#### XXVI. PUBLIC COMMENT.

45. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

46. If, for any reason, this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the parties.

#### XXVII. SIGNATORIES/SERVICE.

47. Each undersigned representative of the Defendant and the Deputy Section Chief of the Environmental Enforcement Section, Environment and Natural Resources Division of the U.S. Department of Justice certifies that he or she is fully authorized to

enter into the terms and conditions of this Consent Decree and to execute and legally bind the party he or she represents to this document.

48. Defendant hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

49. Defendant hereby agrees to accept service of process by mail with respect to all matters arising under, or relating to, this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

Judgment is hereby entered in accordance with the foregoing Consent Decree this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

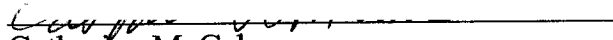
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UNITED STATES DISTRICT JUDGE

**United States v. Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods**  
**United States District Court**  
**District of New Hampshire**  
**Consent Decree**

The following parties hereby consent to the entry of this Consent Decree:

For Plaintiff, UNITED STATES OF AMERICA

  
Catherine McCabe  
Deputy Section Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice

Dated: 8/3/04

\_\_\_\_\_  
PETER FLYNN, Attorney  
Environmental Enforcement Section  
Environmental and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611

Dated: \_\_\_\_\_

**United States v. Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods**  
**United States District Court**  
**District of New Hampshire**  
**Consent Decree**

THOMAS P. COLANTUONO  
United States Attorney  
District of New Hampshire

By: \_\_\_\_\_

Dated: \_\_\_\_\_

T. DAVID PLOURDE  
Assistant United States Attorney  
District of New Hampshire  
55 Pleasant Street  
Concord, NH 03301-3904

**United States v. Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods**  
**United States District Court**  
**District of New Hampshire**  
**Consent Decree**

Dated: \_\_\_\_\_

\_\_\_\_\_  
STEPHEN S. PERKINS

Director

Office of Environmental Stewardship, Region I

U.S. Environmental Protection Agency

One Congress Street

Boston, Massachusetts 02114-2023

Dated: \_\_\_\_\_

\_\_\_\_\_  
KATHLEEN E. WOODWARD

Senior Enforcement Counsel

Office of Environmental Stewardship, Region I

U.S. Environmental Protection Agency

One Congress Street

Boston, Massachusetts 02114-2023

**United States v. Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods**  
**United States District Court**  
**District of New Hampshire**  
**Consent Decree**

FOR DEFENDANT, Old Dutch Mustard Company, Inc., d/b/a Pilgrim Foods

\_\_\_\_\_ Dated: \_\_\_\_\_  
Paul Santich, President  
98 Cutter Mill Road  
Great Neck, NY 11021

The following is the name and address of Pilgrim's agent for service:

Agent for Service

Robert P. Cheney, Jr., Esq.  
Sheehan, Phinney, Bass + Green, PA  
143 North Main Street, Suite 103  
Concord, NH 03301-5089